FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

CIVIL ALPPLICATION NO.403 OF 2005
IN
WRIT PETITION NO.137 OF 2004
WITH
CIVIL APPLICATION NO.404 OF 2005
IN
WRIT PETITION NO.147 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr.J.Shekhar i/b. J.Shekhar & Co., for the Petitioners.
Mr.R.M. Patne, A.G.P. for Respondent Nos. 2 to 6.
Mr. Anurag Jain i/b. Dr. V.K. Chaudhary, for Respondent No.1.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.
DATED : 21st February,2005
P.C.

. The Civil Applications along with Writ Petitions are being disposed of by this common order. The Writ Petitions came to be dismissed by order of this Court dated 11th February, 2005. This Court noted that the petitioners had not preferred Revision available under Section 101 of the Maharashtra Co-operative Societies Act and dismissed the petitions for non-prosecution and vacated the ad-interim relief.

2. Two Civil Applications have been taken out for setting aside the said orders. We have heard learned Counsel for the parties on merits. It is firstly contended that the vires of Section 101 of the M.C.S. Act is challenged on the ground that the procedure for recovery is discriminatory considering the provisions like Section 91 of the M.C.S. Act. That issue had come up before the Division Bench of this Court in the case of M/s.Annapurna Engineering Corporation & Ors. v. State of Maharashtra & Ors., in Writ Petition No.3489 of 2002 and the Division Bench of this Court after considering the said contention has rejected the same.

3. It is then contended that the matter pertains to banking. The State had no right to enact the M.C.S. Act. This was an issue before the Full Bench of this Court. The Full Bench held that in so far as amount over Rs.10.00 lakhs in view of the Central Legislation the provisions of the M.C.S. Act, cannot be given effect to. That judgment has been stayed by the Apex

Court.

4. It is thirdly contended that the proceedings against the guarantor under Section 101 of the Act could not have been initiated. The petitioners are not guarantors. Even otherwise the language of Section is by Urban Co-operative Bank for recovery of the arrears of its dues. It is thus clear that the language provides for relief both against the principal debtor and the guarantor. That contention, therefore, has to be rejected.

5. Lastly it is contended that there has been violation of fair play and natural justice. The petitioners have been given opportunity. In our opinion though we are allowing Civil Application No.403 of 2005 in Writ Petition No.137 of 2004 and Civil Application No.404 of 2005 in Writ Petition No.147 of 2004, we do not find any merit in the Writ Petition Nos.137 of 2004 and 147 of 2004 which are accordingly dismissed.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)